

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

DWAYNE B. ADAMS,

Plaintiff,

Case No. 1:18-cv-01748-CL
OPINION AND ORDER

vs.

WELLS FARGO BANK, N.A. and QUALITY
LOAN SERVICE CORPORATION OF
WASHINGTON,

Defendants.

AIKEN, District Judge:

United States Magistrate Judge Mark Clarke issued his Findings and Recommendation (“F&R”) (doc. 21) in this case on February 20, 2019. Judge Clarke recommended that defendant Wells Fargo Bank N.A.’s Motion to Dismiss (doc. 10) be granted and the case dismissed with prejudice. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

Plaintiff filed timely objections to which Wells Fargo responded. Accordingly, the Court must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Dawson v. Marshall*, 561 F.3d 930, 932

(9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Having reviewed the objections, the F&R, and the record, the Court agrees that each of plaintiff's claims should be dismissed and finds no error in Judge Clarke's reasoning. However, because the Court concludes that one of plaintiff's objections provides a basis to modify the F&R, the Court ADOPTS the F&R (doc. 21) with the following modification.

Plaintiff argues that his breach of contract claim should not have been dismissed with prejudice because he "was prepared to plead that he made the required payments in a timely manner but that the payments were rejected without cause or explanation." Obj. (doc. 23) at 2. Although those allegations standing alone would not cure the deficiencies in plaintiff's breach of contract claim, it is conceivable that plaintiff could remedy the deficiencies identified by Judge Clarke in his F&R through the allegation of additional facts.

Accordingly, dismissal of plaintiff's breach of contract claim is without prejudice and with leave to file an amended complaint within thirty (30) days of the date of this Order. Plaintiff is advised that failure to file an amended complaint within the allotted time will result in a judgment of dismissal.

IT IS SO ORDERED.

DATED this 8th day of April 2019.



Ann Aiken
United States District Judge